REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB NO. 284
(C.T.A. Case No. 6680)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

PHILIPPINE NATIONAL BANK,
Respondent.

Promulgated:
NOV 15 2007 GA Apolinario

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D E C I S I O N

BAUTISTA, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by herein petitioner Commissioner of Internal Revenue assailing the Decision dated

[1] *Rollo*, pp. 8 – 39 with Annexes.

November 27, 2006 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 6680 partially granting herein respondent Philippine National Bank's claim for refund or issuance of a tax credit certificate in the amount of P2,918,556.57 representing over-remittance of final withholding taxes ("FWT") on its Foreign Currency Deposit Unit ("FCDU") related transactions for taxable year 2001; and the Resolution dated May 24, 2007 of the Court in Division denying herein petitioner's Motion for Reconsideration.

Antecedent Facts

The antecedent facts, as narrated by the Court in Division in its Decision, are as follows:

> "Petitioner[2] is a corporation duly organized and existing under the laws of the Philippines, with principal office at PNB Financial Center, President Diosdado Macapagal Blvd., Pasay City. Respondent,[3] on the other hand, is the duly appointed Commissioner of Internal Revenue vested with the authority to exercise the functions of said office, including, *inter alia*, the power to grant refunds for any internal revenue tax erroneously paid, assessed or collected, holding office at the Bureau of Internal Revenue Building, Agham Road, Diliman, Quezon City.
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> As a commercial bank duly authorized by the Bangko Sentral ng Pilipinas (BSP) to operate under the expanded foreign currency deposit system, petitioner is mandated by Section 57(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Revenue Regulations (RR) No. 02-98, as amended, to withhold the final income tax due: (a) on the interest income derived by its resident clients from their FCDU deposit accounts (FCDU Deposits) with petitioner at the rate of seven and a half percent (7.5%) as prescribed by Section 24(B)(1) of the NIRC of

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[2] Herein Respondent.
[3] Herein Petitioner.

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1997, as amended; and (b) on the interest income derived by other lending banks from petitioner's foreign currency borrowings (FCDU Borrowings) at the prescribed rate of (10%) under Section 27(D)(3) of the NIRC of 1997, as amended.

Pursuant to Section 2.58(A)(2)(a) of RR No. 02-98, as amended, the filing of the return and remittance of final taxes withheld shall be within twenty-five days after the end of each month. Accordingly, on the dates specified below, petitioner filed with the Bureau of Internal Revenue (BIR) its Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form 1601-F) for the months of January, February, March and April, 2001 and remitted final income taxes withheld in the total amount of P6,363,562.68. The remittance of P6,363,562.68 included the amount of P4,144,096.22 representing 10% final withholding taxes on the interest income derived by other lending banks from petitioner's FCDU Borrowings, detailed as follows:

FINAL INCOME TAXES WITHHELD ON

Exhibit	Period Covered	Date Return Filed & Tax Remitted to	Interest & other income payments on foreign currency transactions/loans payable to FCDUs	Other Payments to Non-resident Foreign Corps	Prizes exceeding P10,000 & other Winnings paid to individuals	TOTAL AMT OF FINAL TAXES WITHHELD
			(10%)	(15%)	(20%)	
D, XX	Jan., 2001	26-Feb-01	P 746,834.71	P 2,113,986.46	P 105,480.00	P 2,966,301.17
E, YY	Feb., 2001	26-Mar-01	1,009,567.36			1,009,567.36
F, ZZ	March, 2001	25-Apr-01	1,146,106.83			1,146,106.83
G,AAA	April, 2001	25-May-01	1,241,587.32			1,241,587.32
		Total	**P 4,144,096.22**	P 2,113,986.46	P 105,480.00	P 6,363,562.68

Likewise, under Section 2.58(A)(2)(c) of RR No. 02-98, as amended, petitioner is required to file the return and remit the related final taxes withheld on the interest income on FCDU Deposits within twenty-five days after the end of each quarter. Thus, on April 25, 2001, petitioner filed its Quarterly Remittance Return of Final Income Taxes Withheld On Interest Paid on Deposits and Yield on Deposit Substitutes/Trusts/Etc., (BIR Form No. 1602) with attached Summary Listing of Taxes Paid for the first quarter of 2001 and remitted final withholding taxes in the sum of P331,156,245.36 which included the amount of P1,238,072.58 representing 7.5% final withholding taxes on the interest income derived by petitioner's resident clients with their FCDU deposit accounts.

Petitioner, however, alleges that the amounts of P4,144,096.22 and P1,238,072.58 do not represent the correct FWT

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due on the interest income on FCDU Borrowings and FCDU Deposits. According to petitioner, there were erroneous postings made by its employee in the corresponding subsidiary ledgers as there was an over-remittance in the amounts of: (a) US$59,243.36 pertaining to the 10% FWT on FCDU Borrowings; and (b) US$14,111.92 pertaining to the 7.5% FWT on FCDU Deposits or in the sum of US$73,355.28.

Relative thereto, petitioner filed an administrative claim for refund with the BIR on June 6, 2001 corresponding to the alleged over-remittance of final withholding taxes on the interest income on FCDU Borrowings and FCDU Deposits in the total amount of US$73,355.28.

As respondent has not rendered any ruling or decision on the aforesaid claim, petitioner filed a Petition for Review with this Court on April 22, 2003.

Respondent, in his Answer filed on June 26, 2003, raised the following Special and Affirmative Defenses:

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The amount of P3,648,026.23 being claimed by petitioner as allegedly representing overpaid final withholding tax for the year 2001 was not properly documented;

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

7. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit; and

8. Claims for refund are construed strictly against the claimant for the same partake [of] the nature of exemption from taxation.

During the course of the trial, petitioner presented documentary and testimonial evidence. Respondent, on the other

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hand, manifested that he is submitting the case for decision as he had no witness to present."[4] *(Citations omitted)*

The Ruling of the Court in Division

On November 27, 2006, the Court in Division rendered its Decision partially granting herein respondent's claim for refund or tax credit in the amount of P2,918,556.57 representing over-remittance of final withholding taxes on its FCDU related transactions for taxable year 2001.

The Court in Division found the evidence submitted by herein respondent to be sufficient to show that there was an excess payment of P3,648,024.78 as a result of the erroneous posting made by one of its employees, Ms. Ma. Rosario V. Lubrico. However, the over-remittance for the month of February 2001 pertaining to the 10% final taxes withheld on interest income earned by other lending banks from herein respondent's FCDU Borrowings in the amount of US$15,114.44 or P729,468.21 was filed out of time. Respondent only had until March 26, 2003 to file the said claim, while the instant judicial claim was filed only on April 22, 2003, hence, the Court in Division denied the same. Consequently, the Court in Division granted a tax refund or tax credit in the reduced amount of P2,918,556.57.

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[4] *Rollo.*, pp. 20 – 24, (pp. 1 -5, Decision, C.T.A. Case No. 6680).

The dispositive portion of the Decision reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND**, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** to the petitioner the reduced amount of P2,918,556.57 representing over-remittance of final withholding taxes on its FCDU related transactions for taxable year 2001.
>
> **SO ORDERED.**"

On December 18, 2006, herein petitioner filed a Motion for Reconsideration[5] of the Decision dated November 27, 2006 to which an Opposition[6] was filed by herein respondent.

On May 24, 2007, the Court in Division issued a Resolution denying the Motion for Reconsideration for lack of merit.

The Issue

Hence, the instant recourse where petitioner raises the sole issue of whether or not respondent is entitled to a refund in the amount of P2,918,556.57 allegedly representing over-remittance of final withholding taxes on its FCDU related transactions for the taxable year 2001.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

[5] *Records*, C.T.A. Case No. 6680, pp. 238 - 243.
[6] *Id.*, pp. 246 - 257.

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The provisions governing recovery of erroneously or illegally collected taxes are Sections 204 (C) and 229 of the National Internal Revenue Code of 1997 ("NIRC"), which provide that:

> "*SECTION 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. – The Commissioner may –*
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> xxx xxx xxx
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> xxx xxx xxx
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> "*SECTION 229. Recovery of Tax Erroneously or Illegally Collected.* –
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> No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return

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> upon which payment was made, such payment appears clearly to have been erroneously paid."

From the foregoing, it is clear that in order for a taxpayer to be entitled to refund, it must prove not only that the taxes paid were illegally or erroneously collected but also that: (a) a written claim for the refund or credit thereof was duly filed with the Commissioner; and (b) the suit or proceeding was instituted within two years from the date of payment of the tax or penalty regardless of any supervening cause that might arise after such payment.[7]

In the case at bar, petitioner admits that final withholding taxes were remitted to the Bureau of Internal Revenue through the Bangko Sentral ng Pilipinas' ("BSP") Electronic Fund Transfer Instruction System ("EFTIS"). His only contention is that respondent failed to prove that the postings made by respondent's employee were in fact erroneous. He claims that the statement of respondent's witness that there was an erroneous posting resulting to an over-remittance of final withholding tax without proving and substantiating the same is self-serving and should not be given credence. He anchors his contention on the jurisprudential rule that claims for refund are strictly construed against the claimant and liberally in favor of the taxing authority.

We are not persuaded.

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[7] ACCRA Investment Corporation v. Court of Appeals, G.R. No. 96322, 204 SCRA 957, December 20, 1991 and Atlanta Land Corp. v. CIR, C.T.A. EB No. 79, (C.T.A. Case No. 6987), May 23, 2006.

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It is indeed axiomatic in the law of taxation that in an action for refund/credit, the taxpayer has the burden of showing that taxes paid were erroneously collected and that failure to meet such burden is fatal to its cause as such claims for refund are strictly construed against the claimant.[8] However, in this case, We find that respondent was able to discharge this burden.

Respondent is mandated by Section 57(A)[9] of the 1997 NIRC, as amended, in relation to Sections 2.58(A)(2)(a)[10] and (c)[11] of Revenue Regulations ("RR") No. 02-98, as amended, to withhold the final income tax due: (a) on the interest income derived by its resident clients from their FCDU deposit accounts (FCDU Deposits) with respondent at the rate of seven and a half percent (7.5%) as prescribed by Section 24(B)(1) of the NIRC of 1997, as amended; and (b) on the interest income derived by other lending banks from respondent's foreign currency borrowings (FCDU

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[8] Far East Bank and Trust Company as Trustee of Various Retirement Funds v. Commissioner of Internal Revenue and The Court of Appeals, G.R. No. 138919, 488 SCRA 473, May 2, 2006; and Philippine Electrical Manufacturing Company, C.T.A. Case No. 4323, October 24, 1994.

[9] "(A) Withholding of Final Tax on Certain Incomes. — Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E); 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5); 28(A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code."

[10] "For large taxpayers, the filing of the return and the payment of tax shall be made within twenty five (25) days after the end of each month."

[11] "The return of final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangement shall be filed and the payment made within twenty five (25) days from the close of each calendar quarter."

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Borrowings) at the prescribed rate of (10%) under Section 27(D)(3) of the NIRC of 1997, as amended.

Accordingly, for the first quarter of 2001, respondent remitted the amount of Php331,156,245.36[12] for the final withholding taxes on the interest income on FCDU Deposits and the amount of P6,363,562.68[13] for the final withholding taxes on the interest income derived by other lending banks for respondent's FCDU Borrowings.

In order to prove actual payment of these taxes, the respondent presented as evidence the BSP FTI Transaction Registry Forms and the Certification issued by the BSP dated September 2, 2004 which the Court in Division considered as sufficient proofs to show that respondent actually remitted the aforementioned taxes.[14]

Respondent then proceeded to present evidence showing that a portion of these payments was erroneously collected. It presented one of its employees, Ms. Ma. Bella V. Montañez, Asst. Manager of the Treasury and Accounting Division, who testified under oath that there was an over-remittance in the total amount of US$73,355.28 or P3,648,026.23. She explained that the over-remittance was caused by Ms. Ma. Rosario V. Lubrico who got confused in posting the remittances in the subsidiary ledgers, and in the process, posted the remittance for the 10% withholding

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[12] *Rollo*, p. 22, (p. 3 Decision, C.T.A. Case No. 6680).
[13] *Id.*, p. 21, (p. 2, Decision, C.T.A. Case No. 6680).
[14] *Id.*, p. 26, (p. 7, Decision, C.T.A. Case No. 6680).

tax to the 7.5% withholding tax subsidiary ledger.[15] As a result, there was an over-remittance of (a) US$59,243.36 pertaining to the 10% FWT on FCDU Borrowings; and (b) US$14,111.92 pertaining to the 7.5% FWT on FCDU Deposits.

We find no reason to suspect the testimony of the witness especially since her testimony is supported by documentary evidence showing that for the months of January to April 2001, the amounts of 10% withholding tax on FCDU borrowings were inadvertently posted as US$15,144.44; US$20,918.04; US$23,210.88; US$24,241.23; while for the months of January to March relating to the 7.5% withholding tax on FCDU deposits were posted as US$4,236.60; negative US$8,631.26; and negative US$25,072.20.[16]

Thus, contrary to the claim of petitioner, the Court in Division in partially granting respondent's claim did not rely solely on the testimony of respondent's witness but in addition evaluated and examined the following documents:

(a) Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form 1601-F) for the months of January, February, March and April 2001 *(Exhibits "D", "E", "F", and "G")*;

(b) Quarterly Remittance Return of Final Income Taxes Withheld for the first quarters of 2001 *(Exhibit "H")*; BSP FTI Transaction Registry Forms *(Exhibits "XX" to "AAA")*;

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[15] TSN dated March 10, 2004, p. 20.
[16] *Rollo*, p. 29, (p. 10, Decision, C.T.A. Case No. 6680).

(c) Certification issued by the Bangko Sentral ng Pilipinas dated September 2, 2004 *(Exhibits "BBB" and "BBB-1")*;

(d) Subsidiary ledgers for interest income derived by other lending banks from respondent's FCDU borrowing during the months of January 2001 to April 2001 *(Exhibits "OOO-1", "OOO-2', "PPP-1", "PPP-2", "QQQ-1", "RRR-1", "RRR-2", "SSS-1" to "SSS-4, "TTT-1", "TTT-2", "UUU-1" and "UUU-2")*;

(e) Subsidiary ledgers for interest income derived by respondent's resident clients from their FCDU deposit accounts *(Exhibits "DDD-1" to "DDD-3", "EEE-1", "GGG-1", "GGG-2", "III-1", "LLL-1", "MMM-1" to "MMM-6" and "NNN")*;

(f) Respondent's subsidiary ledgers denominated either as Accounts Payable (B/P) Account Code 6718 or Accounts Payable (TCD) Account Code 6718 *(Exhibits "J" to "BB")*; and

(g) Treasury Operations Division: Schedule of Over-remittance of Withholding Taxes *(Exhibit "B")*.

A careful re-examination of the foregoing documents shows that the total tax due on the 7.5% withholding tax on FCDU deposits should only be US$10,960.28 while the total tax due on the 10% withholding tax on FCDU borrowings should only be US$24,241.23. But since respondent remitted an amount of US$25,072.20 for the 7.5% withholding tax on FCDU deposits and an amount of US$83,484.59 for the 10% withholding tax on FCDU borrowings, there is an over-remittance of US$14,111.92 and US$59,243.36, respectively.

As we see it then, respondent is indeed entitled to a refund as it was able to present sufficient evidence to support its claim. However, as aptly ruled by the Court in Division, respondent's claim must be reduced as its

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over-remittance for the month of February 2001 pertaining to the 10% final taxes withheld on interest income earned by other lending banks from respondent's FCDU Borrowings in the amount of US$15,114.44 or P729,468.21 was filed outside of the two-year reglementary period.

We need not belabor that the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[17] Thus, in the absence of the Court's abuse or improvident exercise of authority, findings of facts made by the Court in Division, especially if supported by the evidence, must be accorded deference and respect.[18] Such is the situation in the present case.

Given that respondent paid thru error or mistake and the petitioner accepted the payment, the principle of *solutio indebiti* under Article 2154 of the New Civil Code, which provides that "if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises," must be applied. Petitioner therefore has the obligation under the law to refund the erroneously paid taxes of respondent.

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[17] El Greco Ship Manning and Management Corporation v. Commissioner of Customs, C.T.A. EB No. 172 (C.T.A. Case No. 6618), March 14, 2007.
[18] Union Refinery Corporation v. Commissioner of Customs, C.T.A. EB NO. 149 (C.T.A. Case No. 5917), January 15, 2007.

In closing, we reiterate the ancient principle that no one, not even the state, shall enrich oneself at the expense of another.[19] In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty for the harsh power of taxation must be tempered with evenhandedness.[20]

WHEREFORE, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision dated November 27, 2006 and Resolution dated May 24, 2007 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

[19] Citibank, N.A. v. Court of Appeals, G.R. No. 107434, 280 SCRA 459, October 10, 1997.
[20] Filinvest Development Corporation v. Commissioner of Internal Revenue, G.R. No. 146941, August 9, 2007.

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CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice

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